

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

In the matter of:

MILDRED BILLINGSLY  
(Chapter 13 Case 186-00520)

Debtor

MILDRED BILLINGSLY

Plaintiff

v.

RAM MOTORS  
and  
CAROLYN ROWLEY

Defendants

Adversary Proceeding

Number 186-0050

**FILED**

at 11 O'clock & 45 min A.M.

Date 12/22/86

MARY C. BECTON, CLERK  
United States Bankruptcy Court  
Savannah, Georgia *PCB*

MEMORANDUM AND ORDER

The Plaintiff is a Chapter 13 Debtor in a case pending before this Court. She alleges that the Defendants violated the automatic stay of 11 U.S.C. Section 362 by repossessing her car during the pendency of the Chapter 13 case. After consideration of the evidence adduced at trial on November 20, 1986, the Court makes the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACT

On March 22, 1986, Mildred Billingsly ("Debtor") bought a 1981 Volkswagen Rabbit automobile at Ram Motors ("Ram"). She paid \$820.00 down and Ram financed the balance of the \$3,395.00 purchase price. (Exhibit P-1). The contract between Ram and the Debtor required the debtor to pay Ram \$54.00 per week.

On May 30, 1986, the car broke down and the Debtor was behind in her payments to Ram. The Debtor had the car towed to Gerald Jones Volkswagen for repairs. Jones gave the Debtor a quote of \$800.00-\$1,000.00 to fix the car. The Debtor could not afford the repairs and Jones simply held the car.

Carolyn Rowley, co-owner of Ram Motors, telephoned the Debtor on June 2, 1986, to demand past-due payments. The Debtor told Rowley that she intended to file a Chapter 13 case, and that the car was at Jones Volkswagen. Rowley repossessed the car from Jones on June 5, 1986, with the Debtor's permission. Ram had the car repaired at a cost of approximately \$1,000.00. Ram sold the car on July 17th after proper notice to the Debtor.

The Debtor filed her chapter 13 case on June 4, 1986. Ram was listed as a creditor in the Debtor's schedules and was mailed notice of the chapter 13 case on June 10, 1986, and again on June 17, 1986. Neither notice has been returned to the Clerk of the Bankruptcy Court. Carolyn Rowley testified that Ram never received either notice; however, she admitted that she does not open all of the business' mail. She testified that Ram first learned of the Debtor's Chapter 13 case on September 18th or 19th when Ram was served with a Temporary Restraining Order from this Court to prevent (belatedly) the sale of the Debtor's car.

The Debtor testified that since her car was repossessed, she has spent an average of \$28.00 per week on cab fare to and from work. However, she admits that the car was not driveable at the time Ram repossessed it and that she could not afford to have it repaired. Her Chapter 13 budget statement confirms that she had no significant excess income to devote to repairs.

#### CONCLUSIONS OF LAW

The Debtor alleges that the Defendants violated the automatic stay of 11 U.S.C. Section 362 by repossessing and selling her car. That section provides that the filing of a

bankruptcy petition:

" . . . operates as a stay, applicable to all entities, of--

- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate."

An individual injured by a willful violation of the automatic stay is entitled to recover actual damages including costs and attorneys fees. 11 U.S.C. §362(h). The Court may also award punitive damages "in appropriate circumstances". Id. A violation of the stay is "willful" if it is done intentionally, with knowledge of a pending bankruptcy case. In re Newman, 53 B.R. 7 (M.D. Tenn., 1985); In re Bragg, 56 B.R. 46 (M.D. Ala., 1985).

There is no allegation or evidence that Ram Motors is a legal entity subject to suit. Mrs. Rowley testified that she and her husband owned the business, but did not elaborate on the legal form of the business. Therefore, I conclude that "Ram Motor Company" is in fact Carolyn Rowley doing business as Ram Motor Company.

It is clear that the Defendant violated the

automatic stay. The Debtor's car was repossessed after the Debtor filed her Chapter 13 case. The car was "property of the estate" and repossession constituted "an act to obtain possession of property of the estate" within the meaning of 11 U.S.C. Section 362(a)(3). The fact that the Debtor consented to the repossession is immaterial. The Debtor cannot lift the stay or abandon property of the estate. See 11 U.S.C. §554; 11 U.S.C. §362(d). The Defendant committed a second, independent violation of the stay by selling the Debtor's car to satisfy the Defendant's claim. 11 U.S.C. §362(a)(4).

The Defendant's first violation of the stay was not "willful". There is no evidence that the Debtor or her attorney told anyone at Ram Motors about the Chapter 13 case after it was filed.<sup>1</sup> This Court's notice of the case was not mailed until June 10, 1986, five days after the Debtor's car was repossessed. I conclude that the Defendant's first violation of the stay was not willful, and therefore, that the Debtor is not

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1 - Ram's attorney argues that the Debtor and her attorney concealed the pending Chapter 13 case in the hope that Ram would have the car repaired and then be compelled to surrender it to the Debtor. While there is no direct evidence of such a conspiracy, it is at least peculiar that neither the Debtor nor her attorney gave Ram clear, actual notice of the pending Chapter 13 case.

entitled to recover damages. 11 U.S.C. §362(h). The Debtor is also estopped from claiming damages for the repossession of the car because she consented to that repossession.

I conclude that the Defendant's second stay violation--sale of the car--was willful. This Court mailed notices of the Chapter 13 case to the Defendant on June 10, 1986, and again on June 17, 1986. Mrs. Rowley concedes that the address shown from Ram in the Court's file is accurate, and that she received mail from the Court sent to the same address in September. Neither notice has been returned to the Clerk of Court. Mrs. Rowley also concedes that she does not open all of the business' mail, and therefore cannot say positively that someone at Ram Motors did not receive notice of the Debtor's Chapter 13 case. Based on evidence of mailings and lack of return, I must presume that the notices were delivered and that some administrative problem at Ram prevented those notices from coming to Mrs. Rowley's attention. Both notices were mailed well before July 17th when the car was sold. Therefore, in the absence of rebuttal evidence, I conclude that the Defendant committed a "willful" violation of the automatic stay.

The Debtor is entitled to recover actual damages, including costs and attorneys fees. Her actual damages, other than attorney's fees are de minimus. The car was useless

to the Debtor at the time it was repossessed. It did not run and the Debtor could not afford to have it repaired. Given that cost of the repairs exceeded the Debtor's downpayment, the Debtor had no equity in the car. The Debtor's only compensable damages are nominal damages and the costs of bringing this action.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Plaintiff have judgment against the Defendant Carolyn Rowley in the amount of \$50.00 nominal damages and \$125.00 as reasonable attorney's fees and costs of bringing this action.



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 18<sup>th</sup> day of December, 1986.

FILED

at 11 O'clock & 45 min. AM

**United States Bankruptcy Court**

Date 12/22/86  
MARY C. BECTON, CLERK  
United States Bankruptcy Court  
Savannah, Georgia POB

For the SOUTHERN District of GEORGIA

MILDRED BILLINGSLY

Case No. 186-00520

v.  
RAM MOTORS  
and  
CAROLYN ROWLEY

Plaintiff  
Defendant

Adversary Proceeding No. 186-0050

**JUDGMENT**

☒ This proceeding having come on for trial or hearing before the court, the Honorable  
Lamar W. Davis, Jr., United States Bankruptcy Judge, presiding, and  
the issues having been duly tried or heard and a decision having been rendered.

[OR]

☐ This proceeding having come on for trial before the court and a jury, the Honorable  
United States Bankruptcy Judge, presiding, and  
the issues having been duly tried and the jury having rendered its verdict.

[OR]

☐ The issues of this proceeding having been duly considered by the Honorable  
United States Bankruptcy Judge, and a decision  
having been reached without trial or hearing.

**IT IS ORDERED AND ADJUDGED:**

That the Plaintiff, MILDRED BILLINGSLY, shall recover of the Defendants, RAM MOTORS and CAROLYN ROWLEY, the principal sum Fifty Dollars and 00/100 Cents (\$50.00) and One Hundred Twenty-five Dollars and 00/100 Cents (\$125.00) as reasonable attorney's fees and costs of bringing this action, together with interest at the rate of 5.77% from date until paid in full.

MARY C. BECTON

Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

Date of issuance: December 22, 1986

By: Patsy C. Burkhalter  
Deputy Clerk